

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

AMERICAN FEDERATION OF STATE,)	
COUNTY AND MUNICIPAL)	
EMPLOYEES,COUNCIL 81,)	
LOCAL 459)	
Charging Party)	
)	
)	
v.)	
)	<u>ULP NO. 01-01-305</u>
)	
NEW CASTLE COUNTY)	
Respondent)	

ORDER OF DISMISSAL

1. NEW CASTLE COUNTY (“County”) is a public employer within the meaning of the Public Employment Relations Act, 19 Del. C. Section 1302(n).
2. The AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 81, LOCAL 459 (“AFSCME”) is an employee organization within the meaning of 19 Del. C. Section 1302(i) of the Public Employment Relations Act, and the exclusive bargaining representative within the meaning of 19 Del.C. Section 1302(j), of certain employees of the County, including Daniel E. Tharby (“Tharby”), a former County employee.
3. Tharby was terminated by the County for alleged misconduct. The matter was submitted to an arbitrator whose decision included, with preconditions, a reinstatement of Tharby.

4. On January 18, 2001, AFSCME filed an Unfair Labor Practice petition, alleging the County violated 19 Del.C. Section 1307 (a)(5), by its refusal to comply with the arbitrator's decision to reinstate Tharby.
5. On or about January 23, 2001, New Castle County filed a Complaint in the Court of Chancery, seeking to vacate and/or modify the arbitrator's award which ordered Tharby to be reinstated. The County asserted that reinstatement would violate public policy, Merit System Rules and New Castle County Discipline Policy.
6. On or about January 23, 2001, AFSCME filed a Motion to Dismiss the County's Complaint in the Court of Chancery.
7. By request of the County, and without objection by AFSCME, PERB's processing of the Unfair Labor Practice charge filed by AFSCME was stayed pending processing of the County's Complaint and AFSCME's Motion to Dismiss in the Court of Chancery.
8. On March 14, 2002, following briefing and oral argument by the parties, the Court found that the based on the record, the County had not established an essential element of its claim, namely, that Tharby had engaged in fraudulent conduct. Granting AFSCME's Motion to Dismiss, the Court ruled "all that has been shown is an error, a possible error, of fact by the arbitrator, which this Court can not review. I am satisfied that the only facts of which the Court can take cognizance are those found by the arbitrator".
9. Via telephone communication with the PERB, on or about April 1, 2002, AFSCME's representative, Perry Goldlust, Esq., conveyed that the Court of

Chancery's decision had effectively resolved the need for PERB's further processing of the Unfair Labor Practice charge.

WHEREFORE, this Charge is hereby dismissed with prejudice.

IT IS SO ORDERED.

/s/Charles D. Long, Jr.

CHARLES D. LONG, JR.

Executive Director

Public Employment Relations Board

DATED: July 29, 2002